



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2018-0212; FRL-9978-97-Region 1]

### Air Plan Approval; Connecticut; Prevention of Significant Deterioration; Revisions to the Prevention of Significant Deterioration Greenhouse Gas Permitting Authority

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision affects provisions applicable to greenhouse gases (GHGs) in the EPA's Prevention of Significant Deterioration (PSD) permit program. Connecticut requested the revision in response to the June 23, 2014, U.S. Supreme Court's decision in *Utility Air Regulatory Group (UARG) v. EPA* and the April 10, 2015, Amended Judgment by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*. The intended effect of this action is to clarify that the State's PSD rules do not require a source to obtain a permit solely because the source emits or has the potential to emit (PTE) GHGs: above the PSD applicability thresholds for new major sources; or for which there is a significant emissions increase from a modification. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2018-0212 at [www.regulations.gov](http://www.regulations.gov), or via email to. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be

edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets). Publicly available docket materials are available at [www.regulations.gov](http://www.regulations.gov) or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square – Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, tel. (617) 918-1657, email [dahl.donald@epa.gov](mailto:dahl.donald@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

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### **I. Background and Purpose**

On February 28, 2018, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a revision to its State Implementation Plan (SIP) for the treatment of GHGs in the context of the PSD permit program under the Clean Air Act (CAA). The revision consists of removing the requirement that sources would have to obtain a PSD permit solely due to its GHG emissions, commonly known as “Step 2” sources.

On January 2, 2011, GHG emissions were, for the first time, covered by the PSD and title V operating permit programs. *See* 75 FR 17004, (April 2, 2010). To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010, the EPA published a final rule entitled “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (hereinafter referred to as the GHG Tailoring Rule). *See* 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, the EPA limited application of PSD and title V requirements to sources of GHG emissions only if they were subject to PSD or title V “anyway” due to their emissions of pollutants other than GHGs. These sources are referred to as “anyway sources.” In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting program requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the

level in the EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as “Step 2 sources” or “GHG-only sources.”

The United States Supreme Court invalidated the EPA's regulation of Step 2 sources in *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427 (2014). In accordance with that decision, the United States Court of Appeals for the District of Columbia Circuit vacated the federal regulations that implemented Step 2 of the GHG Tailoring Rule. *See Coalition for Responsible Regulation, Inc. v. EPA*, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). Subsequently, the EPA removed the vacated elements from its rules. *See* 80 FR 50199 (August 19, 2015). The EPA therefore has the authority to approve a state's request to remove Step 2 sources from the SIP.

## **II. EPA's Review**

Section 110(l) of the CAA states that the EPA shall not approve a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment (of the NAAQS) and reasonable further progress (as defined in CAA section 7501) or any other requirement of the CAA. The EPA has reviewed the SIP revision and is proposing to find the revision is consistent with Section 110(l) of the CAA.

The EPA's analysis and rationale for proposing to approve Connecticut's SIP revision request can be found in the Technical Support Document (TSD) associated with this action. In addition to the finding under Section 110(l), the EPA reviewed the SIP revision to ensure it is consistent with the EPA's regulations at 40 CFR 51.166, which contain the requirements for a state's PSD permit program regulations. The EPA's May 15, 2018 TSD (which is included in the docket for this action) includes the state requirements revised or removed, a list of the relevant federal provisions relating to the State's revisions, and a description of how each state provision complies with the federal requirements.

During the EPA's review, the EPA noted that there was a typographical error in the certified copy of the regulatory changes Connecticut sent to the EPA. The difference between the certified copy and the state-adopted regulations was due to a clerical error. Connecticut subsequently submitted a revised and correct certified copy of the regulatory changes on May 7, 2018.

### **III. Proposed Action**

Based on our analysis, the EPA is proposing to approve the Connecticut SIP revision, which was submitted on February 28, 2018, for the removal of the requirement that sources must obtain a PSD permit based solely on a source's GHG emissions. The EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate revised RSCA Section 22a-174-3a(a)(1) entitled "Applicability," RSCA Section 22a-174-3a(j)(1) for when control technology applies, and RSCA Sections 22a-174-3a(k)(1) and (2) regarding applicability of GHGs for new major stationary sources and major modifications. All three state regulations were effective February 8, 2018. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office.

### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 12, 2018.

Alexandra Dunn,  
Regional Administrator,  
EPA Region 1.

[FR Doc. 2018-12896 Filed: 6/14/2018 8:45 am; Publication Date: 6/15/2018]